

Amendment No. 1 to HB3185

Winningham
Signature of Sponsor

AMEND Senate Bill No. 3157*

House Bill No. 3185

FILED

Date _____

Time _____

Clerk _____

Comm. Amdt. _____

by deleting all language after the enacting clause and by substituting instead the following:

SECTION 1. Tennessee Code Annotated, Section 49-1-103, is amended by adding the following new subdivisions to be appropriately numbered:

(_) "Design-build firm" means a partnership, corporation, or other legal entity which:

(A) Is certified to engage in contracting through a certified or registered general contractor or a certified or registered building contractor as the qualifying agent or contracts with another legal entity or person which is certified or registered as a general contractor; and

(B) Employs a registered architect who is legally qualified in accordance with title 62, chapter 2, to practice or to offer to practice architecture; or contracts with another legal entity which employs a registered architect who is legally qualified in accordance with title 62, chapter 2, to practice or offer to practice architecture;

(_) "Design-build contract" means a single contract between a local education agency and a design-build firm for the design and construction of a public construction project;

(_) "Design-criteria package" means concise, performance-based information which defines the requirements of the completed project. The design-criteria package may include conceptual drawings and outline specifications to further establish the requirements of the completed project. The purpose of the design-criteria package is to furnish sufficient information to permit design-build firms to prepare a response to a local education agency's request for proposals, which requires, as part of the response to the request for proposals, information

regarding costs to complete the project. The costs of the project shall include, at a minimum, the cost of all construction services, labor and materials and of all professional architectural and engineering services to be furnished by the design-build firm necessary to complete the project. The design-criteria package must specify performance-based requirements for the construction project, including the legal description of the site, survey information concerning the site, interior space requirements and relationships, material quality standards, conceptual design criteria for the project, and site development requirements including utilities, storm water retention and disposal, and parking requirements applicable to the project. The design-criteria package shall also include information regarding requirements for the submission of proposals, evaluation and selection procedures to be used by the local education agency and other information pertinent to the proposal and selection process;

(_) "Design-criteria professional" means a person who is registered to practice or offer to practice architecture and who is employed by or under contract to the local education agency for the provision of professional services in connection with the preparation of the design-criteria package. Having prepared the design-criteria package for a specific project, the design-criteria professional shall not be a participant in any design-build firm which is submitting a proposal for such project;

(_) "Construction management at risk" means the type of agreement between the local education agency and the construction manager which have mutually agreed and entered into a contract for a stipulated cost for the construction work required for the completion of the project;

SECTION 2. Tennessee Code Annotated, Section 49-2-203(a)(3)(C), is amended by deleting subdivisions (i) and (ii) and by substituting instead the following:

(i) Contracts for the construction of buildings or additions to or renovation of existing buildings, where the expenditure for the construction of buildings or

additions to or renovation of existing buildings is in excess of ten thousand dollars (\$10,000), shall be made after receipt of competitive bids. Public notice shall be given at least ten (10) days prior to accepting bids for such construction, and the local education agency shall award the contract to the lowest and best bidder. In the event that no bid is within the budgetary limits set by the local education agency for such construction, the local education agency may negotiate with the lowest and best bidder and the architect-of-record to bring the project scope and cost of the construction project within the funds available.

(ii) Construction management services are services which are provided for a fee and which involve coordination and oversight of the planning, design, bidding, and construction phases of the project. Construction management services are deemed to be professional services and may be performed by a qualified person or firm on the basis of recognized competence and integrity. Such qualified persons or firms shall be restricted to those licensed as general contractors. Construction management services are to be procured through a request for proposals process. The request for proposals shall establish the scope of services required and the criteria for evaluating the proposals. Such criteria shall include construction manager's qualifications and experience on similar projects, qualifications of personnel to be assigned by the construction manager to the project, fees to be charged for construction management services, and any additional criteria deemed relevant by the local education agency; cost shall not be the sole criterion for evaluation. The contract for such services shall be awarded to the best evaluated and most responsive proposer. A construction manager shall be prohibited from self-performing actual construction work on a project over which such construction manager coordinates or oversees the planning, design, bidding, or construction phases of the project. However, in instances where bids have been properly and legally solicited twice for a specific scope of construction work and no bids have been

received, and the construction manager can document to the local education agency that a good faith effort has been made in each bid solicitation, then the construction manager may perform the construction work at a cost of the work agreed upon by the construction manager, the architect-of-record, and the local education agency.

SECTION 3. Tennessee Code Annotated, Section 49-2-203(a)(3)(C), is further amended by adding the following new subdivisions:

(v) A local education agency shall have the power to employ procedures to contract with a design-build firm for the design and construction of new facilities, or additions to or renovation of existing facilities pursuant to a design-build contract, which shall be procured through a request-for-proposal process as provided in this subdivision. All design-build firms shall procure bids for their respective proposals independently. The proposal process shall satisfy any other competitive bid requirements. Procedures for the use of this proposal process shall include, at a minimum, the following:

(a) The preparation of a design-criteria package for the design and construction of the project. The local education agency shall retain, or have in its employment, the services of a design-criteria professional to prepare the design-criteria package;

(b) The public solicitation of proposals, pursuant to a request for proposals including a design-criteria package, from qualified design-build firms and the evaluation of the responses submitted by those firms based on the evaluation criteria and procedures established by the local education agency prior to the solicitation of proposals;

(c) The evaluation by the design-criteria professional of the design-build proposals for compliance with the design criteria package. The findings of each proposal evaluated shall be recorded for the local education agency's review and record; and

(d) The evaluation and selection of the design-build firm based on the proposals received and on the qualifications and experience of the design-build firm on similar projects, design features, experience of personnel to be assigned to the project, costs of the project, and any additional factors deemed relevant by the local education agency; costs shall not be the sole criterion for evaluation;

(vi) A design-build firm offering to render construction services together with architectural and engineering services may do so provided:

(a) A registered architect participates substantially in all design-related aspects of the offering including the coordination of professional engineering services;

(b) As a part of the offering to the local education agency to provide design-build services, a written disclosure is included stating that such architect is engaged by and contractually responsible solely to such design-build firm; and the design-build firm confirms that such architect shall have responsible control of the architectural services and of the coordination of professional engineering services and, further, that such architect's services will not be terminated, without cause, prior to the completion of the project and without prior written notice to the contracting local education agency;

(c) Professional design services required in connection with preparation of the proposal and for the completion of the project shall not be selected solely on the basis of the cost of these services; and

(d) The rendering of architectural services by such architect will conform to the provisions of title 62, chapter 2.

(vii) The local education agency may enter into a construction management at risk agreement with a construction manager for a stipulated cost of the construction work and the construction manager may bid to self-perform

any portion of the project for which the construction manager is qualified and adheres to the bid procedures incumbent upon the other bidders provided:

(a) Professional design services including architectural and engineering services shall be performed under a separate contract between the local education agency and the design professionals licensed to perform such services; and

(b) Construction work under the coordination and oversight of a construction manager shall be procured through a request for proposal process as provided in this subdivision;

(viii) Nothing in this section shall be construed to prohibit a licensed general contractor for construction from offering to perform a design-build contract; provided, however, that such offer shall clearly indicate at the time of such offer that all professional design services shall be performed by a registered architect in compliance with all provisions of this title and title 62, chapter 2.

SECTION 4. This act shall take effect July 1, 2004, the public welfare requiring it.